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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,647	01/08/2004	Steven M. Johnson	03/214	4209

23643 7590 03/30/2007
BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS, IN 46204

EXAMINER

WEAVER, SUE A

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/752,647

Applicant(s)

JOHNSON ET AL.

Examiner

Sue A. Weaver

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

1. The drawings were received on 1/9/07. These drawings are accepted.
2. The declaration filed on 1/9/07 under 37 CFR 1.131 has been considered but is ineffective to overcome the Slat et al '531 reference.
3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Slat et al '431 reference to either a constructive reduction to practice or an actual reduction to practice. There is no evidence to show diligence. Nor is there any evidence to show that any of the acts took place in this or a NAFTA country. Applicant has not established where the acts took place.
4. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Slat et al reference. While the drawings may show conception somewhere before the date of the reference applicant has failed to show any evidence of the other acts. See MPEP 7.15.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 3 remain rejected under 35 U.S.C. 102(e) as being anticipated by Slat et al '858.

Note figure 4A showing the annular outer ridge defining a standing ring at 34 and the dome at 36 with the inward connecting portion shown in solid lines. Note that the dome moves upward in response to vacuum resulting after capping as shown in broken lines at 36'.

6. Claims 5 and 7 remain rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Slat et al '858.

Note that the container of Slat et al is a hot fill container and therefore is filled by the usual hot fill method. To have observed the movement of the dome to be sure that the cap provides a seal would have been obvious.

7. Claims 1, 3, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silvers '380, of record.

Silvers teaches a container base with a bottom flex panel which is considered to include an annular outer ridge 26 a dome connected to the outer ridge and at the center protruding away from the top and a flexible annular joint including member 32 forming an inner ridge where the protruding dome is defined which protrudes toward the top. The flex bottom flexes inwardly under vacuum forces and with members 38 resists movement or sagging away from the top. To have observed the bottom to be sure that the cap provides a seal would have been obvious.

8. Claims 2, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claims 1 and 5 above, and further in view of Finlay et al '978, of record.

To have alternately oriented the ribs of Slat et al such that they are diagonally arranged on the cylindrical wall would have been obvious in view of such teaching by Finlay et al.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents show other polymeric containers.

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10. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. () _____ - _____ on _____
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Registration Number: _____

Art Unit: 3781

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday from 5:30 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Anthony Stashick. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SW



**SUE A. WEAVER
PRIMARY EXAMINER
GROUP 3200**